

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ALLAN THOMAS ROCKWELL,)	Case No.: 1:22-cv-00392-JLT-EPG
)	
Plaintiff,)	ORDER ADOPTING IN FULL FINDINGS AND
)	RECOMMENDATIONS
v.)	
)	
TUOLUMNE COUNTY, et al.,)	(Docs. 76, 77.)
)	
Defendants.)	

Allan Thomas Rockwell, proceeding *pro se*, filed this lawsuit on April 4, 2022, against Michael Choate, Denise Choate, Tuolumne County, and Melissa Brouhard. (Doc. 1.) Denise Choate thereafter filed a motion to dismiss all claims as well as a request for judicial notice. (Doc. 18.) Michael Choate filed an identical motion and request. (Doc. 19.) Tuolumne County and Melissa Brouhard filed a motion to dismiss all claims as asserted against them. (Doc. 24.)

The assigned magistrate judge held a hearing on the motions. (Doc. 54.) On November 15, 2022, the assigned magistrate issued findings and recommendations recommending that Defendants' motions be granted in part, that Denise Choate, Michael Choate, and Tuolumne County be terminated, and leave to amend be given only regarding Plaintiff's claims against Brouhard. (Doc. 76.) Furthermore, the assigned magistrate recommended that Denise and Michael Choates' requests for judicial notice be denied. (*Id.*)

On November 29, 2022, Plaintiff timely filed objections to the magistrate judge's findings and

1 recommendations. (Doc. 77.) On December 13, 2022, Tuolumne County and Melissa Brouhard filed a
2 reply to Plaintiff's objections. (Doc. 80.) According to 28 U.S.C. § 636(b)(1)(C), the Court conducted
3 a *de novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's
4 objections, the Court concludes the findings and recommendations are supported by the record and
5 proper analysis. Based upon the foregoing, the Court **ORDERS**:

- 6 1. The findings and recommendations issued on November 15, 2022 (Doc. 76) are
7 **ADOPTED IN FULL**.
- 8 2. To the extent that Plaintiff's claims against Mr. and Mrs. Choate and Tuolumne County
9 in Counts IV, V, and XII allege misconduct or violations of due process regarding
10 Plaintiff's criminal trial and the evidence used against Plaintiff, Plaintiff's claims are
11 **DISMISSED WITHOUT PREJUDICE** to Plaintiff challenging the constitutionality
12 of his conviction and sentence in a petition for writ of habeas corpus.
- 13 3. Denise Choate's motion to dismiss (Doc. 18) is **GRANTED IN PART**. The federal
14 claim against Ms. Choate (Count V) is **DISMISSED WITH PREJUDICE**, and the
15 state law tort claims against Ms. Choate (Counts VII, IX, XI, XIV, XVI, XVIII, and
16 XXI) are **DISMISSED WITHOUT PREJUDICE** to filing such claims in state court.
- 17 4. Denise Choate's request for judicial notice (Doc. 18) is **DENIED**.
- 18 5. Michael Choate's motion to dismiss (Doc. 19) is **GRANTED IN PART**. The federal
19 claim against Mr. Choate (Count IV) is **DISMISSED WITH PREJUDICE**, and the
20 state law tort claims against Ms. Choate (Counts VI, VIII, X, XV, XVII, XIX, and
21 XXII) are **DISMISSED WITHOUT PREJUDICE** to filing such claims in state court.
- 22 6. Michael Choate's request for judicial notice (Doc. 18) is **DENIED**.
- 23 7. Tuolumne County and Melissa Brouhard's motion to dismiss (Doc. 24) is **GRANTED**
24 **IN PART** as follows:
 - 25 a. Plaintiff's federal claim against Tuolumne County (Count III) is **DISMISSED**
26 **WITH PREJUDICE AND WITHOUT LEAVE TO AMEND**;
 - 27 b. Plaintiff's state law tort claim against Tuolumne County is **DISMISSED**
28 **WITHOUT PREJUDICE** to filing such a claim in state court;

c. Plaintiff's federal claim against Melissa Brouhard (Count I) is **DISMISSED WITHOUT PREJUDICE** for violation of Rule 8 and with leave to amend;

d. Plaintiff's state law tort claims against Brouhard (Counts XII, XX, and XXIII) are DISMISSED WITHOUT PREJUDICE for lack of compliance with the Government Claims Act and with leave to amend.

8. The Clerk or Court is directed to terminate Michael Choate, Denise Choate and Tuolumne County from the docket.

9. Within 30 days from the date of service of this order, Plaintiff may file a Second Amended Complaint.

10. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the amended complaint "Second Amended Complaint" and refer to case number 1:22-cv-00392-JLT-EPG. Further, Plaintiff's amended complaint shall be no more than twenty (20) pages.

11. **Failure to comply with this order may result in the dismissal of this action without further notice.**

IT IS SO ORDERED.

Dated: March 9, 2023


UNITED STATES DISTRICT JUDGE